

**A Loganathan a/l PL Suppiah v Lembaga Kelayakan
 Profession Undang-Undang Malaysia**

HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NO R1-
17-3 OF 1997

B ABDUL KADIR SULAIMAN J
7 JULY 1997

Legal Profession — Admission — Grant of Certificate in Legal Practice — Whether decision of the Qualifying Board in awarding Certificate in Legal Practice was subject to review — Whether the Qualifying Board acted outside the true scope and ambit of its course of instructions in relation to questions in examination — Whether candidate was entitled to grant of Certificate in Legal Practice — Legal Profession Act 1976 ss 5(e) & 26

C Administrative Law — Remedies — Declaration — Examination papers to be declared null and void — Whether candidate entitled to obtain declaration that the examination papers were null and void — Specific Relief Act 1950 s 41

D The plaintiff, not being a sufficiently qualified person as provided for by s 3 of the Legal Profession Act 1976 ('the LPA'), had to pass the Certificate of Legal Practice ('the CLP') examination conducted by the defendant before he could qualify to practise as an advocate and solicitor in the High Court of Malaya.

E The plaintiff sat for the examination twice; in his last attempt in August 1996 ('the examination'), he failed Criminal Procedure ('CPC') and Professional Practice ('PP'). He was dissatisfied with the results and filed an originating summons against the defendant for a review under s 26 of the LPA and pursuant to s 41 of the Specific Relief Act 1950 ('the SRA'). He prayed for, inter alia:

F (i) that the decision of the defendant in examining the plaintiff on CPC and PP for the examination be reviewed and declared null and void as being ultra vires s 5(e) of the LPA; (ii) that the CLP be issued by the defendant with a grade least justified to the plaintiff; or (iii) alternatively, that the purported papers on CPC and PP for the examination and the subsequent marking thereof be declared null and void and that the plaintiff be entitled to the CLP.

G The plaintiff deposed that in examining him, the defendant acted outside the true scope and ambit of the course of instructions in relation to certain questions of both the CPC and PP papers. On this point, the plaintiff referred to the booklet containing the syllabus and subject outlines ('exh K') which he obtained from the defendant in preparation for the examination. He further deposed that if not for the flawed questions, the results he had obtained out of the examination would have been otherwise. The defendant denied the allegation and deposed that the material which the plaintiff obtained from the defendant was a mere outline of the subject courses and was not the course of instructions as alleged. The issues for consideration were: (i) whether the matter that formed the complaint of the plaintiff was subject to review under s 26 of the LPA; (ii) whether the two papers ought to be declared null and void in so far as the plaintiff was concerned.

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Held, dismissing the application;

- (1) It was clear from the contents of exh K that they were not courses of instructions as claimed by the plaintiff because the introduction itself stated that candidates intending to sit for the examination were permitted to make their own arrangement for the examination or to attend courses of instructions run by any private educational institution or colleges. It was clearly stated that the defendant did not provide any courses of instructions for the examination. The defendant merely handled matters relating to the examination, including ascertaining the qualification of the candidates, registration of candidates, determine the syllabus for the examination, preparation of question papers, supervise the examination, processing the result of the examination, announcing the result and the issuing of certificates (see p 244G-I). A
 - (2) Section 26 of the LPA relates to the review of the 'decision' of the defendant by a judge. In carrying out the function under s 5(e) of the LPA, the defendant was not making any decision within the meaning of s 26 of the LPA. There was no power given by the LPA for the judge to make any order, which in this case was to order the defendant to issue the CLP to an aggrieved party. The plaintiff's application was therefore frivolous, vexatious and an abuse of the process of the court (see p 244B-C). B
 - (3) There was merit in the plaintiff's submission that his prayer, for a declaration that the examination be null and void, related to the remedy under s 41 of the SRA. This was because, having been given the opportunity to sit for the examination and having sat for the examination, there was basis for the plaintiff to expect to succeed in his attempt. He was therefore entitled to ask for a declaration as he did. However, whether he would succeed in his application as prayed for was a matter for argument and determination on the merits at which other considerations, such as the exercise of the discretion of the court in granting declaratory orders, would have to be taken into account in the circumstances of the case (see p 246A-C). C
 - (4) If the examination and subsequent marking was declared null and void, then the whole of this exercise would become a futility. Therefore, even if he succeeded in establishing that the examination was of no effect, it would have to be regarded as if he had not sat for the two papers of the examination. Thus, in any event, he could not be entitled to the CLP (see p 246D-F). D
 - (5) On the facts of the case, it was clear that the plaintiff's objections to the questions in the CPC and PP examination papers were without merit and thus it was not a proper case for the court to rule that the impugned questions were null and void (see p 248G). E
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A [Bahasa Malaysia summary]

Plaintif, yang bukannya seorang layak secukupnya seperti yang diperuntukkan oleh s 3 Akta Profesyen Undang-undang 1976 ('APU'), terpaksa lulus peperiksaan Sijil Amalan Guaman ('SAG') yang dikendalikan oleh defendan sebelum dia menjadi layak untuk mengamal sebagai peguamcara dan peguambela di Mahkamah Tinggi Malaya.

B Plaintiff telah menduduki peperiksaan sebanyak dua kali; dalam cubaan akhirnya dalam bulan Ogos 1996 ('peperiksaan tersebut'), dia telah gagal dalam Acara Jenayah ('AJ') dan Amalan Profesyen ('AP').
C Dia tidak berpuashati dengan keputusan peperiksaan dan telah memfailkan saman pemula terhadap defendan untuk kajian semula di bawah s 26 APU dan s 41 Akta Relif Spesifik 1950 ('ARS'). Dia telah memohon, antara lain: (i) supaya keputusan defendan dalam memeriksa plaintif atas AJ dan AP untuk peperiksaan Ogos 1996 dikaji semula dan diisytiharkan sebagai terbatal dan tak sah kerana ultra vires s 5(e) APU 1976; (ii) bahawa SAG diberikan oleh defendan dengan gred yang terbawah sekali kepada plaintif; ataupun (iii) sebagai alternatif, bahawa kertas-kertas AJ dan AP untuk peperiksaan tersebut dan pemeriksaan kemudiannya diisytiharkan sebagai terbatal dan tak sah dan bahawa plaintif berhak kepada SAG.
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E Plaintiff telah mendeposkan bahawa dalam memeriksanya, defendan telah bertindak di luar skop dan lingkungan arahan kursus berkenaan dengan soalan-soalan tertentu kedua-dua kertas AJ dan AP. Mengenai perkara ini, plaintif telah merujuk kepada buku kecil yang mengandungi sukatan dan rangka mata pelajaran ('eks K') yang diperolehinya dari defendan dalam penyediaan peperiksaan. Dia mendeposkan selanjutnya bahawa tanpa soalan-soalan yang cacat itu, keputusan yang akan dicapainya untuk peperiksaan bulan Ogos 1996 akan sebaliknya. Defendan telah menyangkal pengataan dan telah mendeposkan bahawa bahan-bahan yang diperolehi dari defendan merupakan rangka kursus matapelajaran sahaja dan hanyalah suatu panduan dan bukannya arahan kursus seperti yang didakwa.
G Isu untuk dipertimbangkan adalah: (i) sama ada perkara yang merupakan aduan plaintif adalah tertakluk kepada kajian semula di bawah s 26 APU 1976; dan (ii) sama ada kedua-dua kertas harus diisytiharkan sebagai terbatal dan tak sah sejauh mana ianya adalah berkenaan dengan plaintif.
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Diputuskan, menolak permohonan:

I (1) Adalah jelas dari kandungan eks K bahawa ianya bukanlah arahan kursus seperti yang didakwa oleh plaintif kerana pengenalannya sendiri menyatakan bahawa calon-calon yang berniat menduduki peperiksaan tersebut dibenarkan membuat penyediaan mereka sendiri untuk peperiksaan tersebut ataupun untuk menghadiri

arahan kursus yang dikendalikan oleh mana-mana institusi ataupun kolej pendidikan persendirian. Jelas dinyatakan bahawa defendan tidak memperuntukkan apa-apa arahan kursus untuk peperiksaan tersebut. Defendan hanya mengendalikan perkara-perkara yang berkenaan dengan peperiksaan, termasuk mengesahkan kelayakan calon, pendaftaran calon, menentukan sukatan peperiksaan, penyediaan kertas peperiksaan, penyeliaan peperiksaan, memproseskan keputusan peperiksaan, mengisytiharkan keputusan dan mengeluarkan sijil-sijil (lihat ms 244G-I).

- (2) Seksyen 26 APU 1976 adalah berkenaan dengan 'keputusan' defendan oleh hakim. Dalam menjalankan fungsi di bawah s 5(e) APU 1976, defendan telah tidak membuat sebarang keputusan menurut maksud s 26 APU 1976. Tidak ada kuasa yang diberikan oleh APU 1976 untuk hakim membuat sebarang perintah, yang mana dalam kes ini adalah untuk memerintahkan defendan supaya memberikan SAG kepada pihak yang terkilan. Maka permohonan plaintif adalah remeh, menyusahkan dan merupakan penyalahgunaan proses mahkamah (lihat ms 244B-C).
- (3) Terdapat merit dalam hujahan plaintif bahawa permohonannya, untuk deklarasi bahawa peperiksaan diisytiharkan sebagai terbatal dan tak sah, adalah berkenaan dengan remedi di bawah s 41 ARS. Ini adalah kerana, setelah diberi peluang untuk menduduki peperiksaan tersebut dan setelah menduduki peperiksaan tersebut, terdapat dasar untuk plaintif menjangka bahawa dia akan lulus dalam cubaannya. Maka, ianya berhak memohon deklarasi seperti yang dilakukannya. Walau bagaimanapun, sama ada dia berjaya ataupun tidak dalam permohonannya seperti yang dipohon adalah suatu perkara untuk diujahkan dan diputuskan atas meritnya yang mana pertimbangan lain, seperti pelaksanaan budi bicara mahkamah dalam memberikan perintah perisytiharan, akan diambilkira dalam keadaan kes (lihat ms 246A-C).
- (4) Jikalau peperiksaan dan pemeriksaan kemudiannya diisytiharkan sebagai terbatal dan tak sah, maka keseluruhan latihan ini akan menjadi tidak berguna dan plaintif tidak akan berhak kepada SAG (lihat ms 246D-F).
- (5) Berdasarkan fakta-fakta kes, adalah jelas bahawa bantahan plaintif atas soalan-soalan dalam kertas peperiksaan AJ dan AP adalah tanpa merit dan maka dalam kes ini adalah tidak wajar untuk mahkamah memutuskan bahawa soalan-soalan yang dipertikaikan tersebut adalah terbatal dan tak sah (lihat ms 248G).

Notes

For cases on admission, see 9 *Mallal's Digest* (4th Ed, 1995 Reissue) paras 1345-1423.

For cases on declaration, see 1 *Mallal's Digest* (4th Ed, 1995 Reissue) paras 236-292.

A Cases referred to

Tan Sri Haji Othman Saat v Mohd bin Ismail [1982] 1 MLJ 177 (refd)

Legislation referred to

- B** Criminal Procedure (Amendment) Act 1995 s 39
Federal Constitution arts 5(1), 8(1)
Legal Profession Act 1976 ss 3, 5(e), 21, 22, 23, 26
Specific Relief Act 1950 s 41

Loganathan all PL Suppiah (in person) as the plaintiff.

- C** *Porres Royan (Shook Lin & Bok)* for the defendant.

- D** **Abdul Kadir Sulaiman J:** The plaintiff was conferred an honours degree in Bachelor of Laws (LLB) by the University of Wolverhampton. He wanted to practise as an advocate and solicitor in the High Court of Malaya. Not being a sufficiently qualified person as provided for by s 3 of the Legal Profession Act 1976 ('the LPA 1976'), he had to, inter alia, pass the examination conducted by the defendant pursuant to its function under s 5(e) of the LPA 1976. For this purpose, the defendant conducts what is called the Certificate in Legal Practice ('the CLP') examination to cater for persons in the position of the plaintiff. The CLP examination ('the examination') is conducted by the defendant once a year in the month of August.

- E** The plaintiff sat for the examination comprising five subjects conducted by the defendant in August 1995 but he failed three of the subjects, to wit, General Paper, Law of Evidence and Professional Practice ('PP'). According to the conditions laid down by the defendant, in the circumstances of the plaintiff having failed three subjects, he had to re-sit the examination. For this purpose, he obtained from the defendant, 'Ringkasan Matapelajaran Peperiksaan Sijil Amalan Guaman Tahun 1996' — exh K — to his affidavit in reply, which was a booklet containing — as explained in the introduction to the booklet — 'Sukatan Pelajaran dan Ringkasan Matapelajaran' or 'Subject Outlines', part of which is exhibited by the plaintiff as exh E to his affidavit in support and exh L to his affidavit in reply. Having prepared himself for the examination, he sat for it in August 1996. He was again not successful in the examination. This time, he failed Criminal Procedure ('CPC') and PP. He was dissatisfied with the results and on 6 February 1997, he filed an originating summons against the defendant for a review under s 26 of the LPA 1976 and pursuant to s 41 of the Specific Relief Act 1950 ('the SRA 1950') and prayed for the following relief:

- I** (1) the decision of the defendant to examine the plaintiff on CPC and PP for the examination (August 1996) be reviewed and declared null and void as being ultra vires s 5(e) of the LPA 1976, and that this honourable court do order the defendant to issue the CLP with a grade least

- justified to the plaintiff within 14 days from the date of the order to be made hereon; A
- (2) further or in the alternative, this honourable court do declare that the purported examination by the defendant on CPC and PP for the examination (August 1996) and the subsequent marking thereof be null and void and that the plaintiff be entitled to the CLP; B
- (3) the defendant do pay damages to be assessed to the plaintiff;
- (4) this honourable court do grant such other or further relief as it may deem just and equitable to grant in the circumstances; and
- (5) the defendant do pay the plaintiff costs and incidental to this application.

In his affidavit in support, the plaintiff deposed that in examining him, the defendant acted outside the true scope and ambit of the course instructions in relation to question No 5(a) of the CPC paper and question Nos 2(a) and 8(c) of the PP paper. The impugned questions, exh F to his affidavit in support, are as follows: C

CPC paper:

- 5(a) Rabin and Bacha was charged for murder under s 302 of the Penal Code read together with s 34 of the Code. After a preliminary inquiry, on 10 June 1994, Rabin and Bacha were committed to stand trial in the High Court. The trial in the High Court is to commence on 19 August 1996. The Criminal Procedure Code (Amendment) Act 1995 (A908) came into effect on 17 February 1995. D

Advise Rabin and Bacha as to whether they are entitled to a trial by jury in the High Court. E

PP Paper:

- 2(a) It is the duty of an advocate and solicitor to uphold the interest of client, justice and the dignity of the profession. F

Discuss the above statement in connection with the following situations:

- (i) common solicitor acting for both parties; and
- (ii) conflict of duties between that owed to the client and to the court. G
- 8(c) Ivan, a bank clerk, was knocked down by a mini bus while crossing the road. He was admitted to the University Hospital and died the following day. He was a bachelor and is survived by his mother, Grace and two sisters and a brother, namely Ivy, Cintha and Robert. Grace is 63 years old and is taken care of by Ivy and her husband, James. H

Ivy and Cintha are very close and Cintha often visited her mother to help Ivy. Robert who was never close to the family, stayed separately and was of no help to them. Ivy and James lived in the family home, which was left to Grace by her late husband.

Ivy and Cintha decided that their mother Grace, should apply for the letters of administration to administer the estate of Ivan and that they would renounce their rights to any claim to the estate of Ivan. I

Robert, being a difficult person to handle, was approached by the family to renounce his rights. He was aggressive and abusive towards them. Robert claimed that Ivy and James had plans to get the assets of the late Ivan, as Grace was old and was staying with them. He refused to give consent to any renunciation of his rights.

A At the time of his death, the late Ivan was a bank clerk earning RM1,500 a month. He had a bank balance of RM8,725.65 in his savings account with Bank Simpanan Nasional. He also had an insurance policy for RM20,000 with Susahbayar Insurance Co and owned a second-hand car.

B Robert plans to oppose his mother's application for letters of administration.

Advise Grace as to how she should go about obtaining the letters of administration for the estate of Ivan.

C With regard to the CPC paper, question 5(a), the plaintiff deposed that the defendant had acted outside the true scope and ambit of the course of instructions as the defendant purported to examine on jury trial when the procedure for such trial has been repealed. In relation to question 2(a), he deposed that the course instructions separate Advocacy and Ethics but the impugned question was mixed. As regards question 8(c), it purported to question on renunciation but on the facts given, the question of renunciation did not arise by reasons of the Distribution Act 1958.

D Consequently, he deposed that he verily believed that if not for the said flawed questions, the results he obtained out of the August 1996 examination would have been otherwise, ie he would have passed the two papers in the 1996 examination. As such, the decision of the defendant to examine him on the two papers were a nullity as being ultra vires s 5(e) of the LPA 1976 — alternatively, the decision was made by the defendant without or in excess of jurisdiction and not in accordance with the law which had directly affected his fundamental rights or its inevitable effect or consequence on his fundamental rights to livelihood by virtue of the combined effect of arts 8(1) and 5(1) of the Federal Constitution. By reasons of the defendant's statutory and contractual breach, he had suffered injury to feelings, mental distress and pecuniary damages. For all those reasons, he prayed for an order in the terms of his application herein.

E In reply to the said affidavit of the plaintiff, the defendant filed an affidavit affirmed by its director of examination, Khalid bin Yusof, denying the allegation by the plaintiff and questioning the propriety of the plaintiff in seeking a review under s 26 of the LPA 1976 relating to the function of the defendant under the LPA 1976 in providing the CLP examination to the candidates. He deposed that the materials which the plaintiff obtained from the defendant were mere outlines of the subject courses and were meant to be a guide for the candidates, including the plaintiff, sitting for the examination. They were not the course of instructions as alleged by the plaintiff.

F First, the issue is whether the matter that formed the complaint of the plaintiff was subject to review under s 26 of the LPA 1976. This section is one of 25 other sections contained in Pt II of the LPA 1976 beginning with s 4 and ending with s 28. Part II concerns the qualifying board which is the defendant in this case. Of relevance to this application of the plaintiff relating to s 26 are sub-ss (1) and (7) which states:

I 26 (1) Any person dissatisfied with any *decision* of the board may apply to a judge for a review of the decision.

- (7) At the hearing the judge may dismiss the application or make any order under this Act as he considers fair and reasonable. (Emphasis added.)

Therefore, the said subsections of s 26 relate to the review of the 'decision' of the board by a judge, and if after hearing the application of the person dissatisfied with the said decision, the judge allows the application, then the judge may make an order as he considers fair and reasonable. However, the order that he is allowed to make is one under the LPA 1976 and not any order extraneous to the one allowed under the LPA 1976. So, what then are the decisions of the board which is subject to review under s 26(1) of the LPA 1976 — and what are the orders under the LPA 1976 which the judge could make upon the application being successful? The plaintiff who appeared in person in these proceedings submitted that the decision of the defendant which he was challenging was the decision to set the impugned questions outside the course of instructions provided.

Under s 5(e) of the LPA 1976, the defendant is given the function:

... to provide courses of instruction for, and for the examination of, persons whose qualifications are not sufficient to make them qualified persons for the purposes of the LPA 1976 except after undergoing the courses and passing the examination.

It is not in dispute that the plaintiff was one whose qualifications were not sufficient to make him a qualified person for the purposes of the LPA 1976, in not having the qualifications of a qualified person as defined in s 3 of the LPA 1976. Therefore, to be so qualified, the plaintiff, inter alia, had to undergo the courses of instructions and pass the examination provided by the defendant which came within its function under s 5(e) of the LPA 1976 to provide. What then are courses of instructions to be provided for by the defendant? According to the plaintiff, they were those materials which he had obtained from the defendant. However, according to the submission of En Porres Royan, counsel for the defendant, courses of instructions relate to lectures, tutorials, seminars and sessions at which knowledge is imparted to persons involved in the examination whereas the materials obtained by the plaintiff were not. I am inclined to agree with the submission of En Royan. It was clear from the contents of exh K that what the plaintiff claimed to have obtained from the defendant in preparation for the August 1996 was a booklet containing the syllabus and subject outlines which were to be used as a guide and for reference in his preparation for the examination in 1996. They were not courses of instructions as claimed by the plaintiff because the introduction itself states that candidates intending to sit for the examination were permitted to make their own arrangement for the examination or to attend courses of instructions run by any private educational institution or colleges. It was clearly stated that the defendant did not provide any courses of instructions for the examination. The defendant merely handled matters relating to the examination, including ascertaining the qualification of the candidates, registration of candidates, determine the syllabus for the examination, preparation of question papers, supervise the examination, processing the result of the examination, announcing the result and the issuing of certificates.

A Reverting to the issue of whether the matter that formed the complaint of the plaintiff was a subject matter for review under s 26 of the LPA 1976, based on s 26 of the LPA 1976, En Royan submitted that the plaintiff's so-called grievance was not amenable to review under the section. The setting of the relevant examination was the function given to the defendant by the LPA 1976. The plaintiff was not happy with three of the several questions set in two of the papers for the purpose of the 1996 examination. It was the contention of the defendant that the action of the defendant in providing the examination was not a decision-making process as contemplated by s 26 of the LPA 1976, upon which that action would be a subject matter for review. Learned counsel listed out examples wherein the decision of the defendant would be subject to review under s 26. They were the provisions relating to the decision of the defendant under s 21 — when the defendant refused special leave sought to qualify an advocate and solicitor of less than seven years standing and not in active practice, to be a principal; or where the defendant discharged the articles of the articulated clerk pursuant to sub-s (4) thereof. Another instance was where the defendant discharged the articles of the articulated clerk under ss 22 or 23 of the LPA 1976. Learned counsel further submitted that even if he was wrong in relation to the function of the defendant to provide an examination not being a decision, in the light of s 26(7), the plaintiff would have no remedy because the LPA 1976 does not have a provision allowing the judge to order the defendant to issue the CLP as sought by the plaintiff in this application. The plaintiff, on the other hand, made no submissions at all on this point. Again, I share the view of En Royan on this in that in carrying out of a function under s 5(e) of the LPA 1976, the defendant was not making any decision within the meaning of s 26(1) of the LPA 1976, for reading the subsection with the powers given to the judge under sub-s (7) thereof, there was no power given by the LPA 1976 for the judge to make any order under it which, in this case, was to order the defendant to issue the CLP to an aggrieved party. In the circumstances, I hold that this application of the plaintiff for review under s 26 of the LPA 1976 was frivolous and vexatious and was an abuse of the process of court. The first prayer of the plaintiff for an order that the defendant issue him the CLP under the circumstances must therefore, be dismissed.

 However, the plaintiff submitted that if it was so that his application did not come within the ambit of s 26 of the LPA 1976, his second prayer relates to the remedy under s 41 of the Specific Relief Act 1950 ('the SRA 1950'). The section states:

41 Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to the character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in that suit ask for any relief:

 Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration or title, omit to do so.

The defendant, however, did not provide any submission on this. I find there was merit in the submission of the plaintiff that, having been given the opportunity for the plaintiff to sit for the examination in August 1996, and having sat for the examination, there was basis for the plaintiff to expect to succeed in his attempt. He was dissatisfied with the results of the examination and asked for a declaration in his second prayer. To that extent, he was entitled to pray as he did in his second prayer earlier mentioned. Whether he would succeed in his application as prayed for in the second prayer was a matter for argument and determination on the merits at which other considerations, such as the exercise of the discretion of the court in granting declaratory orders, will have to be taken into account in the circumstances of the case (see *Tan Sri Hj Othman Saat v Mohd bin Ismail* [1982] 2 MLJ 177). There was no further relief that I can think of, other than a mere declaration, which the plaintiff can seek in the light of the rejection of his first prayer. Having said that, I will now proceed to consider the merit of the application in relation to the plaintiff's second prayer.

The plaintiff by this second prayer, sought a declaration that the examination by the defendant on CPC and PP for the examination in August 1996 and the subsequent marking thereof be null and void and consequently that he be entitled to the CLP. In my view, his consequential prayer that he was entitled to the CLP on account of the conduct of the defendant was beyond comprehension because, if it was so that the conduct of the defendant be declared null and void, then the whole exercise becomes a futility and under the circumstances, how is he to be entitled to the CLP? A person in his capacity would be entitled to the CLP only if he passed the examination validly carried out and that, through the wrong doing of the defendant in determining the result of the examination, he was not given one. However, in this case, the plaintiff sought a declaration that the examination in relation to the two papers he sat was null and void. If he succeeds in establishing that it was of no effect, then it was to be regarded as if he had not sat for the two papers in the examination. He did not pray that he be allowed to re-sit the two papers on account of they being of no effect.

Therefore, on this second prayer of the plaintiff, the only issue to consider was whether the two papers ought to be declared null and void in so far as the plaintiff was concerned. First, in relation to question 5(a) of the CPC paper, the plaintiff's argument was that the question purported to examine him on the procedure for jury trial consequent upon the amendment to the Criminal Procedure Code (FMS Cap 6) by the Criminal Procedure Code (Amendment) Act 1995 ('the amendment Act') when such procedure had been abolished by the amendment Act. Whilst it was true that the procedure for jury trial in criminal matters had been abolished in this country by the amendment Act, which came into force on 17 February 1995, the amendment provided a saving provision in s 39 thereof as follows:

- A 39 (1) Any preliminary inquiry, trial by jury or trial with the aid of assessors that has been commenced before or on the commencement of this Act shall be continued or concluded in all respects as if this Act had not been passed.
- B (2) For the purpose of sub-s (1), any preliminary inquiry or trial has been commenced when the accused has appeared before or has been brought before the magistrate's court or the High Court, as the case may be, and evidence has begun to be adduced in the inquiry or trial.

C By the saving provisions, the procedure of trial by jury notwithstanding the amendment to the Criminal Procedure Code would continue in respect of cases which had commenced before or on the commencement of the amendment Act. Any preliminary inquiry before the magistrate or trial by jury in the High Court consequent upon the committal by the magistrate after the preliminary inquiry held, which commenced before or on 17 February 1995, would be continued or concluded as if the amendment to the Criminal Procedure Code had not been made to abolish the procedure for trial by jury. So, in respect of these transitional cases, the practising advocates and solicitors must acquaint themselves with the pre-amendment law when giving advice to their clients. Turning to the impugned question 5(a), Rabin and Bacha on 10 April 1994, before the coming into force of the amendment Act, were committed to stand trial in the High Court after a preliminary inquiry. The trial in the High Court was to commence on 19 August 1996 which was after the coming into force of the amendment Act. Question 5(a) required an answer from the candidate in the examination as to the advice to be given to Rabin and Bacha as to whether they were entitled to a trial by jury in the High Court in the circumstances. Therefore,

D the question centres around the operation of the saving provisions in s 39 of the amendment Act. It was not correct therefore, as contended by the plaintiff, that the question purported to examine him on the procedure for jury trial when such procedure had been abolished by the amendment Act. He said that the procedure was no more in existence because, when referring to the Criminal Procedure Code as at the date of the examination,

E the provisions had been deleted. While acknowledging that the notes to the course outline provided by the defendant had stated that students were to keep abreast with amendments to the statutes and to read relevant court decisions until the end of May 1996, the plaintiff argued that a repeal did not include an amendment. With the tongue in the cheek, the plaintiff

F however conceded that amendment included repeal for purpose of interpreting a statute, but not for the purpose of interpreting the course outline. I see no merit in his argument in relation to question 5(a) and, in the circumstances, he failed to establish that the said impugned question was null and void.

G Next, on question 2(a) of the PP paper, the plaintiff's argument

H amounts to this: section A of Pt I of the course outline in respect of PP concerns Advocacy and Duties of Counsel whilst Pt II concerns Ethics of

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the Legal Profession. However, question 2(a) appearing under Pt A of the
question papers consists of questions in respect of 'common solicitor
acting for both parties' which had no relevance to advocacy and duties of
counsel at all. The plaintiff said that the defendant had combined the
subject matters in Pts I and II of the course outline into one single
question instead of having separate questions for Pt I and a separate one
for Pt II. However, little did he realize that the course outline in respect of
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PP provided two sections, to wit, sections A and B. Section A comprised
Part I (Advocacy and Duties of Counsel), and Part II (Ethics of the Legal
Profession). Section B comprised matters relating to Land Law and
Conveyancing, Law of Bankruptcy, and Probate and Administration.
C
Administration of Estates comes under Part III in the course outline as
evidenced by exh L to the affidavit in reply of the plaintiff.

The examination papers in respect of PP, on the other hand, divided
the papers into two parts, Pts A and B. Part A embraced the subjects
covered by section A of the course outline which in turn was made up of
Pt I (Advocacy and Duties of Counsel) and Pt II (Ethics and the Legal
D
Profession). The note to the course outline under item 4 clearly stated that
the examination papers would contain four questions on the topics in
section A. There was nothing in the note to suggest that separate questions
would be set in respect of Pts I and II of section A. However, when we look
at the question paper for PP for 1996 examination, it was clearly stated
E
that the paper consists of two parts, A and B, which were respectively
related to sections A and B topics of the course outline. Question 2(a)
appeared under Pt A which related to section A topics of the course
outline. Therefore, there was no basis for the plaintiff to say that the
defendant had combined the subject matters in Pts I and II of the course
outline into one single question. Therefore, there was no merit at all for
F
the challenge in question 2(a) of the PP paper.

On question 8(c) of the PP paper, the plaintiff alleged that the said
question was devoid of any meaning, ultra vires and unlawful on the
premise that the impugned question concerned renunciation when it should
not arise by reason of the Distribution Act 1958. I see no merit in the
contention of the plaintiff. Upon the analysis of the said question, the issue
G
of renunciation was a mere red herring. The question merely required the
candidate to advise as to how to go about to obtain letters of administration
for the estate of a deceased person in the light of the intending objection
to the application for same.

H
Under the circumstances, I see no merit at all in the application of
the plaintiff as contained in his second prayer. Similarly, as mentioned
earlier, the plaintiff had no merit as regards his first prayer as it did not
concern s 26 of the LPA 1976. I therefore, dismiss this application of the
plaintiff by originating summons against the defendant with costs to the
defendant.

I
Application dismissed.